PUBLIC PROSECUTOR v. BOO CHEW HIA

[A. Cr. J. (Ali J.) November 14, 1962]

[Muar — Criminal Appeal No. 31 of 1962]

Criminal Procedure — Witness — Recall of — Criminal Procedure Code (Cap. 6), ss.35 and 425.

A witness may be recalled whenever it is essential to the just decision of the case. Merely recalling a witness is not in itself an irregularity. In this case as the trial Magistrate had exercised his powers under section 425 of the Criminal Procedure Code in permitting a witness to be recalled, there was nothing irregular about it, and the acquittal of the accused on that ground was wrong in law. The appeal must therefore be allowed, the order of acquittal set aside and the case must be retried before another Magistrate.

MAGISTRATE'S CRIMINAL APPEAL.

Syed Agil Barakbah (Deputy Public Prosecutor) for the appellant.

R. Ramason for the respondent.

Ali J.: This is an appeal by the Public Prosecutor against the decision of the Magistrate at Batu Pahat whereby the respondent, who was charged with an offence under section 4(1)(c) of the Common Gaming Houses Ordinance, 1953, was acquitted and discharged without his defence being called.

The events in the course of the proceedings which led to the acquittal of the respondent were somewhat peculiar. The trial Magistrate having considered that it was necessary for a list of exhibits required to be prepared under section 34 of the Criminal Procedure Code to be produced allowed a prosecution witness to be recalled to give evidence of the list. Soon after this at the request of the respondent, who indicated that he wished to consult a lawyer, the trial Magistrate adjourned the case to the 28th of August, 1962, for continued hearing. When the case came up again before him the trial Magistrate acquitted the respondent holding, *inter alia*, that it was highly irregular for the witness to have been recalled. This, in my view, was surprising because before granting leave to recall a witness, the trial Magistrate must have considered whether by granting the leave the respondent would be prejudiced in his defence. The trial Magistrate was in effect exercising his power under section 425 of the Criminal Procedure Code and the irregularity or otherwise of the course which he adopts must be first considered before exercising that power. However, it was apparent that during the adjournment the trial Magistrate's attention was drawn to the decision of Murray-Aynsley C.J. which was discussed on page 598 of *Mallal's* Criminal Procedure, 4th edn. This decision seemed to have influenced the trial Magistrate into making the decision as he did. I need only say that the circumstances of the case before Murray-Aynsley C.J. were in no way similar to those in the present case. In the case under review the defence had not even commenced and as the respondent was not at the time represented there was no question of counsel having made any address. The law permits a witness to be recalled whenever it is essential to the just decision of the case. Merely recalling a witness is not in itself an irregularity. In the present case it could not have been an irregularity as far as the trial Magistrate was concerned as he had himself thought it necessary to exercise his power under section 425 of the Criminal Procedure Code. For the purpose of this appeal it is sufficient for me to say that the trial Magistrate was acting regularly when he allowed the witness to be recalled and the acquittal was therefore not a just decision of the case.

This appeal is, therefore, allowed, the order of acquittal set aside and the case be sent back for retrial before a different Magistrate.

Appeal allowed.

BALWANT SINGH v. TONG LAM & CO.

[O. C. J. (Rose C.J.) November 20, 1962]

[Singapore — Suit No. 1568 of 1961]

Landlord and Tenant — Subletting before 1949 — Condition against subletting agreed to by tenant in 1954 — Existing sub-tenants not affected — Rent receipts in English not conclusive against tenant knowing no English.

A tenant is not in breach of a condition against subletting when it has taken effect prior to his agreeing to that term.

ACTION.

J. Grimberg for the plaintiff.

H. E. Cashin for the defendants.

Rose C.J.: The plaintiff claims possession of certain premises from the defendants on the ground that in breach of their tenancy agreement they sublet part of the premises to three separate parties, namely, Lim Bock Seong, Tan Sue Eng and Ng Huat.

The plaintiff acquired in 1947 the premises in question, No. 629 North Bridge Road, together with Nos. 631, 633 and 635, the last named being a cinema and, apparently, the most important of the properties concerned. The acquisition in 1947 was a joint one between the plaintiff and his three brothers. By a family arrangement in 1951 the property vested in the plaintiff and his late brother, one Hira Singh. Now the plaintiff is the sole owner.

It is common ground between the parties that late in December 1948 or in January 1949 the present defendants became the tenants of No. 629 North Bridge Road, with the consent of the plaintiff and his brothers.

The plaintiff's position is that as early as 1949 there was a prohibition against subletting, which was signified by a note to that effect printed at the top of the form of receipt issued by Messrs. Gian Singh and Company, of whom the Singh brothers were the partners, from January 1949 onwards.